

RECORDATION NO. 10962 + 10962-A
Filed 1425

Avec Equipment Corporation
P.O. Box 706
Galion, Ohio 44833

OCT 30 1979-11 30 AM
INTERSTATE COMMERCE COMMISSION

No. 9-2034630

Date OCT 30 1979

Fee \$ 50.00

October 18, 1979

ICC Washington, D. C.

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RE: Agreement with Youngstown &
Southern Railway Company

Gentlemen:

We enclose herewith for recording pursuant to Section 20(c) of the Interstate Commerce Act the original and two certified copies of an Operating and Use Agreement, dated November 28, 1978, between Youngstown & Southern Railway Company and Avec Equipment Corporation, assignee of Industrial Development Corporation, which Agreement provides for the operation and use by Youngstown & Southern Railway Company of 400 boxcars owned by Avec Equipment Corporation.

The parties to the transaction are as follows:

Lessor: Avec Equipment Corporation
P.O. Box 706
Galion, Ohio 44833

Lessee: Youngstown & Southern Railway Company
324 P & LE Terminal Building
Pittsburgh, Pa. 15219

The following is a general description of the railroad equipment covered by the document:

No. of Units	Description	A.A.R. Mechanical Designation	Identifying Road Nos.
400	50' - 55-ton rebuilt boxcars with 10' doors	XP	See Appendix A to Operating and Use Agreement

Secretary
October 18, 1979
Page Two

Also enclosed is a check in the amount of \$50.00 payable to the Treasurer of the United States to cover recording of the Agreement. Would you please acknowledge receipt of the enclosures on the enclosed copy of this letter and stamp and return to our representative the original of the document.

Very truly yours,

AVEC EQUIPMENT CORPORATION

By Philip S. Hesby
Philip S. Hesby
President

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Philip S. Hesby
Avec Equipment Corporation
P. O. Box 706
Galion, Ohio 44833

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/30/79 at 11:30AM , and assigned re-
recording number(s). 10962 + 10962A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 40952
Filed 1425
OCT 30 1979-11 30 AM
INTERSTATE COMMERCE COMMISSION

OPERATING AND USE AGREEMENT

AGREEMENT made and entered into as of the 28th day of November, 1978, between INDUSTRIAL INVESTMENT CORPORATION, an Ohio corporation, (hereinafter called "Owner") and YOUNGSTOWN & SOUTHERN RAILWAY COMPANY, an Ohio corporation, (hereinafter called "User").

W I T N E S S E T H:

WHEREAS, User desires to obtain from Owner certain railroad cars, hereinafter specifically designated or to be specifically designated for the purposes and upon the terms and conditions as set forth in this agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Cars to be Furnished: Owner agrees to make available to User, and User agrees to use during the term of this agreement that number of used railroad cars to be provided by Owner under the terms and conditions and for the rentals hereinafter set forth, which cars are sometimes hereinafter called the "Cars". The Cars will be 50' fifty-five ton Cars with 10' doors. Any additional descriptions of the Cars, including any Association of American Railroads (A.A.R.) mechanical designation, identifying marks, road or serial numbers to be delivered to User upon the execution of this agreement, are set forth in Appendix A hereto.

Any additional Cars delivered to User shall be provided for and accepted by User as provided in paragraph 6, on the basis set forth in paragraph 5 hereof. When any such subsequent delivery of Cars is made, an amendment to Appendix A shall be executed by User and Owner indicating the type and description of the Cars involved, as reflected in Appendix A for Cars delivered upon the execution of this agreement. Upon acceptance by User of any subsequently delivered Cars, the provisions of this agreement shall become fully applicable thereto.

2. Term of Agreement: The term of this agreement for any Cars delivered hereunder shall commence upon their acceptance by User, as provided for in paragraph 6 hereof, and shall terminate on December 31, 1980, irrespective of the date of the acceptance of any Car. Owner shall have the right, upon mutual agreement of the parties hereto, to renew this agreement on a year to year basis upon giving User 90 days' written notice.

3. Delivery and Use of Cars: Owner agrees to deliver at its expense, and User agrees to accept the Cars at such point or points to which the parties may agree, not necessarily on User's property. Owner's obligation as to such deliveries shall be subject to all delays resulting from causes beyond its control. The Cars shall be used only in such interline service as shall be mutually agreed upon between the parties, and none of the Cars, except with prior written consent of Owner, shall be shipped beyond the boundaries of the United States, Canada or Mexico.

Owner agrees to apply User's reporting marks to the Cars, notwithstanding that title to them shall at all times remain in Owner, and Owner agrees to apply appropriate marks on the Cars to show title in Owner. Owner will also cause each Car to be marked with User's road numbers referred to in Appendix A. Such road numbers shall not be changed, except by agreement of both Owner and User.

4. Rental: Beginning with the third month after acceptance of the Cars, a Rental shall be payable each calendar month thereafter consisting of the net of all amounts paid or received by User during such month under the then applicable Car Hire, Car Service and A.A.R. repair billing rules, less a fee to User (Service Fee) of Fifteen Dollars (\$15.00) per Car per calendar month. Whenever the net of all amounts received by the User in a calendar month exceeds the amount of all payables and the Service Fee for such month, User shall promptly pay to Owner such net amount. In the event that the net of all amounts paid by User and/or the Service Fee for any calendar month exceeds the amount of receivables for such month, Owner shall promptly remit to User such net amount upon bill rendered therefor. In any

event, User shall be entitled to receive the Service Fee for each Car for each calendar month this agreement is in effect with respect to such Car.

Upon termination of this agreement for any reason, the Owner may, at its option,

- (a) apply the above Rental provisions to the use of Cars during such period of the agreement for which Rental had not been paid prior to termination, or
- (b) negotiate a final settlement of Rental with User.

5. Reports: Beginning in April, 1979, User shall report to Owner by the 20th day following the end of each calendar month the information applicable to such month with respect to all Cars:

- (a) Net amount of per diem, incentive per diem, if any, and mileage received and/or paid by User;
- (b) Gross amount of car service charges paid;
- (c) Net amount of A.A.R. repair billing;
- (d) Gross amount of Service Fee;
- (e) Net amount due Owner or payable to User.

In addition to the foregoing, User shall report to Owner in substantially the same form as Appendix B hereto in each June and December a listing, by Car, of all amounts received with respect to such Car pursuant to Car Hire Rules and a listing of all A.A.R. repair billing actually paid in the prior period.

6. Acceptance of Cars by User at Owner's Expense:

Each of the Cars shall be subject to User's inspection and approval, and shall thereupon be accepted in writing by a duly authorized officer of User.

7. Maintenance or Repairs: Owner shall at all times during the term of this agreement, and at its own cost and expense, maintain and keep the Cars in good and proper repair and running condition. In the event, however, that any of the Cars are damaged or destroyed while on User's railroad, User shall assume financial responsibility therefor. Owner also agrees that it shall, at its own cost, comply with and maintain the Cars in accordance with all governmental laws, regulations and requirements, and with the Rules of Interchange of the Association of American Railroads (or of any successor thereto), with respect to the use, maintenance and operation of the Cars during the continuance of this agreement. In the event that any equipment or appliance on any Car shall be required to be changed or replaced, whether removable or otherwise, or any additional or other equipment or appliance is required to be installed on any Car in order to comply with such laws, regulations, requirements and rules effective after the date of the delivery of such Car, after receipt of written permission to make repairs, Owner agrees to make such changes, additions and replacements at Owner's expense. Any parts installed or replacements made upon the Cars by User shall be considered accessions to the Cars and title thereto shall be immediately vested in Owner.

8. Cars Removed from Service: In the event of the loss or destruction of any Car from any cause whatsoever during the term of this agreement, the Rental with respect to such Cars shall terminate at the time provided for in the Car Hire Rules, provided, however, that the Service Fee shall terminate three months thereafter. The Owner or its insurer shall have the rights of subrogation and indemnification to and for any claim for loss or destruction and may thereunder, at its option, assume the right to collect its claim for the value of such Car from the party responsible and liable for the loss or destruction of the Car. In furtherance of the foregoing, User hereby authorizes and empowers Owner in Owner's own name, or in the name of and as attorney hereby irrevocably constituted for User to ask, sue for, collect, receive and enforce any and all rights to which User may be entitled by reason of the destruction of the said Car. Owner shall have the right, but shall not be obligated, to substitute for any destroyed Car another Car of the same type and capacity and the monthly Rental with respect to such substituted Car shall commence upon delivery of such substituted Car to User.

9. Payment of Taxes, Liens and Other Items: The following additional costs and expenses shall be the responsibility of and be paid by Owner:

(a) All license fees, assessments and sales, use, property and other tax or taxes now or hereafter imposed by any state, federal or local government upon the Cars or upon the use thereof, whether assessed in the name of Owner or User. If User for any reason pays any of the aforesaid, Owner agrees to reimburse User promptly upon receipt of bills therefor; and

(b) The cost and expense of removing User's markings from the Cars upon termination of this agreement.

User shall not pay a license fee, assessment or tax in the first instance without giving Owner at least ten (10) days written notice thereof so that Owner may have an opportunity to make payment itself or contest the same in which latter event User will cooperate with Owner.

10. Assignment: User shall make no transfer or assignment of its interest under this agreement with respect to the Cars covered hereunder without Owner's prior written consent. No right, title or interest in any of the Cars shall vest in User by reason of this agreement except for the provisions of paragraph 4 of this agreement, or by reason of the delivery to or use by User of the Cars, except the right to use the Cars

in accordance with the terms of this agreement. Owner and any assignees of Owner shall be entitled to sell, assign and transfer its entire title and reversion in and to the Cars and/or its right to Rentals and other payments payable by the User hereunder and to the performance of the other covenants herein made by User, and such assignee or any subsequent assignee thereof shall have and succeed to all of the rights, duties and remedies herein conferred upon and reserved to Owner. User shall be obligated under this agreement to the Owner, assignee or subsequent assignee only upon receipt by User of written notification from both the Owner and its assignee or by any assignee or subsequent assignee that such assignment or subsequent assignment has taken place.

11. Remedies: If User shall fail to perform any of its obligations hereunder, Owner shall give written notice to User, and if User shall fail to cure within thirty (30) days of such notice, Owner at its election may either (a) terminate this agreement immediately, or (b) withdraw the Cars which have to that date been delivered from the service of the User and deliver the same, or any thereof, to others upon such terms as Owner may see fit.

The time of payment of Rental is of the essence of this agreement. If User shall fail to carry out and perform any of its obligations under this agreement, or if a petition in bankruptcy, or for reorganization, or for a trustee or receiver is filed by or against User (unless such petition shall

be dismissed within thirty (30) days from the filing or other effective date thereof, or shall, within such period be nullified, stayed or otherwise rendered ineffective, or unless any such receiver(s) or trustee(s) shall, within thirty (30) days from the date of his or their appointment, adopt this agreement pursuant to due authority of the Court of his or their appointment), then and in any such event, Owner may, at its option, declare this agreement terminated and upon such declaration all Rentals not theretofore due and payable shall forthwith become due and payable and Owner may enter upon the railroad or premises where the Cars or any of them may be and retake possession thereof, and remove User's road number and name therefrom. If Owner waives its said rights or does not declare this agreement terminated, User's obligations hereunder shall continue. The aforesaid remedies of Owner shall not be deemed exclusive, but shall be cumulative and in addition to all other rights and remedies given or provided by law or in equity. No delay or failure on the part of Owner to exercise any rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof, and no act or omission to act by Owner against User or against any Car, or any delay or indulgence granted or allowed by Owner, shall prejudice any of Owner's rights.

12. Termination and Return of Cars: At the end of the term of this agreement, or upon any termination thereof for cause as defined herein, User shall forthwith surrender possession of the Cars (except Cars previously removed from service) to Owner at such point or points where the Cars may then be located. From the time of such surrender, the Cars shall become and remain the responsibility of Owner.

13. Recordation: Owner at its option may cause this agreement to be filed and recorded with the Interstate Commerce Commission under the Interstate Commerce Act in order to publish notice of, and to protect the title of Owner to the Cars. User shall execute any and all other and further instruments as shall reasonably be requested by Owner to assure such publication and such protection of such title. Owner shall pay all costs, charges and expenses, including all recording and registration taxes and fees, incident to the filing, registering and/or recording of this agreement and of any instruments of further assurance hereunder.

14. All Parties Bound: Subject only to the limitations of paragraph 9 hereof, this agreement shall be binding upon and inure to the benefit of the Owner and User and their respective successors and assigns.

15. Execution in Counterparts: This agreement may be simultaneously executed in two or more counterparts, each

of which shall be deemed to be an original, and such counterparts together shall constitute but one and the same agreement which shall be sufficiently evidenced by any such original counterpart.

16. Notice in Writing: Any notice, demand or other communication hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or deposited in the mail, first class postage prepaid, or delivered to a telegraph office, charges prepaid, addressed as follows: If to the Owner: To the attention of Philip Hesby, President, Industrial Investment Corporation, P. O. Box 706, Galion, Ohio 44833. If to the User: To the attention of Gordon E. Neuenschwander, President, Youngstown & Southern Railway Company, 324 P&LE Terminal Building, Pittsburgh, PA 15219, or addressed to either party at such other address as such party shall hereafter furnish to the other in writing.

17. Construction: The remedies in this agreement provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in Owner's favor existing at law or in equity and may be exercised from time to time and as often and in such order as may be deemed expedient by the Owner. The captions herein are inserted for convenience only and shall not affect the construction of this agreement. No delay or omission of the Owner in the exercise of any right or power accruing upon any

event of default shall impair any right or power or shall be construed to be a waiver of such event of default or an acquiescence therein. The provisions of this agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, Owner and User, respectively have caused these presents to be signed in their respective corporate names as of the day and year first above written.

INDUSTRIAL INVESTMENT CORPORATION

WITNESS:

By Thos S. Hesby, Pres.
President

R. E. Donley

YOUNGSTOWN & SOUTHERN RAILWAY COMPANY

WITNESS:

By Ernest E. Neuenhauer
President

R. E. Donley

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY)

) ss:
)

On this 4th day of Jan, 1944, before me, the undersigned Notary Public, personally appeared PHILIP S. HESBY, who, being by me duly sworn, acknowledged that he is President of Industrial Investment Corporation; that he executed the foregoing instrument for and on behalf of said corporation and that the execution of the foregoing instrument was the free act and deed of said corporation.

Dorinda M. Duncanson

NOTARY PUBLIC
PENNSYLVANIA
My Comm. Expires July 1, 1950

My commission expires: Feb. 3, 1946

23019	25011
23113	25020
23136	25097
23303	25251
23382	25287
23559	25366
23641	25374
23670	25400
23717	25494
23737	25569
23759	25591
23772	25614
23921	25632
23930	25683
23982	25685
24013	25689
24088	25722
24095	25812
24111	25825
24219	25903
24253	25954
24286	25974
24442	25997
24591	26073
24858	26093
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